* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on 3.4.2007
Decided on 21.5.2007

\+ CRL.M.C. 650/2005

R.P.GUPTA ..... Petitioner
Through Mr. Jasbir Singh Malik, Advocate

versus

THE STATE NCT OF DELHI & ANR. ..... Respondent
Through Ms. Alka Sharma, Advocate for R-2

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat

1. This present Petition, under Section 482, Cr. P.C. impugns the order dated 16.11.2004 of the learned Learned Addl. Sessions Judge (hereafter "the revisional Court").

2. The brief facts necessary to decide this petition are that the Petitioner is a retired Gazetted officer, and allotee of Flat No.25 in Vasant Co-operative Group housing society Ltd. (hereafter called “the Society”). The Respondent too is an allotee occupant of a flat in the same society. He was Vice President of the society till 23.10.1994. It is alleged that he threatened to implicate the Petitioner and other members in false cases.

3. The Respondent on 31.10.1997 registered an FIR No. 948/97 under Sections 336/427 IPC of P.S. Trilokpuri alleging that when he went for a walk at 11 pm with his daughter, some persons threw bricks at him, one of which fell on his car. He alleged that the same night, someone broke the wind screen of his car. He claimed that Kishori Lal and Parikshit Sahney to be the prime suspects; they had raised their voice in the General Body meeting against him. Thereafter, the complaint along with few other residents submitted a representation to SHO P.S. Trilokpuri on 08.11.1997 stating that the alleged incident dated 31.10.1997 was false and concocted. The Respondent was allegedly annoyed with the Petitioner and threatened to ruin him and his family. He included the Petitioner's name as one of the prime suspects in the FIR to tarnish his image.

4. It is alleged by the Petitioner that the Respondent published circulars besides writing objectionable letters, against him and circulated them in the society. The Petitioner and the chairman of Federation of Group of Housing societies started bus services from the society. The Respondent represented to Sh. Shanker Bhan, chairman of Group Housing Society complex, Mayur Vihar, leveling serious allegations against the Petitioner that he was involved in large scale embezzlement and misappropriation of funds of the Society. The Respondent had sent the communication on the letter head of All India Public Welfare Society, claiming himself to be Legal Adviser, whereas he had ceased to be one.

5. The Respondent further sent a letter on 21.10.2000 to Sh. Omesh Sehgal, the then

Chief Secretary, Government of Delhi alleging that the Petitioner was involved in large scale irregularities, unauthorized construction and misappropriation of society funds to the tune of Rupees One Crore. The Respondent made defamatory allegations against the Petitioner. The Petitioner further alleged that in the 2nd week of January 2001, the accused again published a defamatory letter and circulated it amongst the residents of the Society. The letter had contained allegations of fraud, embezzlement, misappropriation of society's funds and outraging modesty of Smt. Sundari Gopal Krishnan, and the petitioner's arrest under Section 509 IPC. Few other letters too were also published in Metro East Shopping convenience, a local newsletter. This lowered the reputation of the complainant and he sent a legal notice dated 17.1.2001, calling upon the Respondent to withdraw false derogatory imputations.

6. The Petitioner alleged that the respondent complained to Commissioner of Police, DCP(E), ACP Kalyanpuri and SHO Mayur Vihar, making false allegations. On receiving the complaint two police men visited the Petitioner and made enquiries. The complaint notice was served on the Petitioner on 4.2.2001. He was asked to appear in the Police Station on 5.2.2001. The Respondent, on 4.2.2001 made remarks against the Petitioner and few others stating that he embezzled a huge amount of society funds, outraged modesty of a woman and was involved in other anti-social activities.

7. The Petitioner alleged that the Respondent was aware that he could not embezzle any amount since he was not member of Managing Committee incharge of the affairs of

society during that period, yet he made false and frivolous allegations. The Petitioner submitted that the Respondent committed an offence under Section 499 IPC and therefore a complaint against him was lodged.

8. The trial Court initially issued process upon the complaint, but later, after the respondent sought for recall of that order, discharged the Respondent by an order dated 20.12.2003. The extracts of the order dated 20.12.2003 are as follows:

> *"In my considered view no primafacie offence as alleged has been made out against the Respondent. All the imputations as allegedly made by the Respondent are covered under various exceptions of section 499 IPC and does not constitute any defamation as sought to the made out by the Petitioner. The evidence available on record might have been sufficient for making out the case of summoning order, under section 204 Crl.P.C. but at the stage of framing of notices and disposal of application of recalling of summoning order, the sufficiency of material is not sufficient. It is a settled legal proposition that at the stage of framing notice and charge, the appreciation of evidence has to be comparatively stricter and should make out prima facie case. In the light of the aforesaid discussion in my considered view, no primafacie case u/s. 499 IPC is made out against the Respondent. Hence, Respondent is discharged".*

9. The Petitioner preferred a revision against the impugned order dated 20.12.2003. The revisional court rejected the petition. The extracts of the order dated 16.11.2004 are as follows:

> "*I find from record no infirmity in law or illegality in the impugned order dated 20.12.2003 of the Ld. Trial Court passed at the stage of framing of notice as well as on the application for recalling of summoning order moved by the Respondent in the subject complaint of the revisionist against the Respondent for alleged offence punishable u/s. 500 IPC, discharging the respondent/accused of the said offence. The revision petition is accordingly dismissed*"

10. It was submitted that there were sufficient materials on record to enable the trial court to frame charge/notice for the offences punishable under Section 500 IPC, having

regard to the averments made in the complaint. It was contended that the courts below committed error in concluding that the letters dated 24.11.99, 21.10.2000, the leaflet circulated in second week of January, 2002, the so-called complaint dated 24.1.2001 do contain scurrilous and defamatory statements targeting the petitioner and lowering him in the esteem of others. Counsel contended that the two serious allegations about the petitioner being party to embezzlement and misappropriation of funds as well as the about his assault upon a lady, with a view to outrage her modesty, *ex facie* disclosed defamation and that the courts below fell into error in ignoring this. It was further contended that the courts should have not considered the merits at this stage and proceed to frame the charge.

11. Learned counsel contended that the revisional court committed error in not seeing that the trial court could not have recalled the order issuing process in view of the judgment of the Supreme Court reported as *Adalat Prasad Vs. Rooplal Jindal and others, (2004) 7 SCC 338* and *Subramanium Seturaman Vs. State of Maharashtra & Anr., 2004(13) SCC 324.* It was further contended that the discussion by the courts leading to discharge of the accused respondent, was also not justified, in view of the judgment in *State of Orissa Vs. Devendra Nath Padhy, 2005(1) SCC 568.*

12. Learned counsel for the respondent submitted that both the courts had considered the matter extensively before concluding that criminal proceedings against the respondent/complainant had to be dropped. It was contended by learned counsel that the jurisdiction under Section 482 should be exercised sparingly and in rare circumstances if the court is convinced that refusal to intervene would inevitably lead to miscarriage of

justice. Learned counsel contended that the facts of this case point to the contrary; if this court reverses the orders of the courts below, the respondent would be put to extreme prejudice and hardship and made to face an unjustified proceeding.

13. It was contended that the respondent/complainant was for some time an office bearer of the society; he was vice President, till October, 1994. During his tenure, for a brief while, when the respondent was elected as Vice Chairman in June, 1994, (and resigned due to disgust in October, 1994) he noticed that the managing committee of the society persistently failed to get the accounts audited and retrieve missing documents, which were pointed out in the Special Audit Report that led to appointment of an Administrator for getting the audit done. Despite appointment of 5 administrators after 16.3.1998, accounts were left unaudited. Counsel contended that the letter written to Omesh Sehgal could not be treated as defamatory. Firstly, the letter was not proved and that it merely mentions that the petitioner and others were adopting delaying tactics and evading internal audit. As far as the so-called leaflet was concerned the petitioner had no role in it -even no attempt was made to connect him with it. It was also submitted that what is stated as a complaint dated 24.1.2001 is a copy of the notice under Section 160 Cr. P.C. issued by the P.S. Mayur Vihar. That under no circumstances can be said to contain defamatory imputations. The slander dated 4.12.2001, allegedly recording misappropriation and allegation of the complainant outraging modesty of the complainant was again unproved. It was contended that in fact the complainant/petitioner had been implicated in a criminal case and was issued with summons/notice by the

criminal court which was later set aside on revision, on 1.3.2001, on the ground of limitation.

14. Counsel contended that each of the facts alleged were such that even if taken together, could not be considered defamatory, since they were all allegations of public interest. Admittedly Special Judge has seen the complaint against the petitioner, which implicated several persons; a first information report No.6/2002 P.S. Mayur Vihar under Section 420/468/120/34 IPC was registered against 11 persons including the complainant/respondent for alleged embezzlement and misappropriation of funds. The same was under investigation. For all these reasons the trial court and later the revisional court correctly concluded that the petitioner that the case against the petitioner's could not be allowed to proceed.

15. Counsel lastly contended that the reasoning about legal infirmity with the order of the courts below in setting aside the summoning order cannot be the only ground for setting them aside as doing so would itself result in miscarriage of justice She placed reliance upon the judgment of this court in *B.P.Saha Vs. Dr. Vineet Suri, 134 (2006) DLT 616* to say that the putting the clock back in all cases where the courts dropped proceedings by applying the rule in *K.M,.Mathew Vs. State of Kerala,* 1992(1) SCC 217 was not justified. It was submitted that the facts of this case do not warrant exercise of discretionary powers to quash or interfere with the proceedings or orders of the courts below.

16. The factual narrative would show that according to the complaint there were four alleged incidents which led to offences by the respondent accused. All these by and large

pertain to the petitioners' functioning as an office bearer of the society – the respondent was admittedly Vice President though for a few months in 1994. It is also a mater of record that Administrators were pointed to go into the functioning of the society and adverse audit report against the society as well as office bearers was finalized, indicting their role. Action was recommended. On the strength of these apparently a separate first information report was lodged. These facts were not refuted. A copy of the FIR has been filed and is a part of the record. The petitioner in his rejoinder has filed a copy of a final report dated 16.7.2004 recommending that the offences of cheating, fraud, forgery were not made out. As far as the allegation of assault on a lady resident, launching of criminal proceedings and orders are concerned undeniably the petitioner was arrayed as accused ; its is again matter of record that the criminal court issued process against him. That order was however later set aside by the revisional court on the ground of bar of limitation.

17. The courts below made the order dropping the charges against the respondent/accused at a time when the judicial thinking was that the criminal courts – in appropriate cases, having regard to the circumstances, could recall orders issuing summons/dropping the proceedings. In this case the respondent had been summoned to appear on 29.4.2002. His application for recall was made immediately upon receipt of the summons, and before that date i.e. 27.4.2002. The trial court made its order on 20.12.2003, recalling the summoning order and dismissing the complaint. In *K.M.Mathew's case (supra),* it was held by the court that it was, open to the accused, upon receipt of the summons, to plead before the Magistrate, (who has to try an offcence only when allegation existed about commission of the offences) that the process issued

ought not to have been issued and that if the Magistrate was satisfied with such argument, he could drop the proceedings. This view of the law held the field for more than a decade i.e. 12 years. It was eventually overruled by the judgment in *Adalat Prasad* (supra) on 25.8.2004.

18. The facts of this case show that the trial court recalled the summoning order and dropped the criminal proceedings much before the ruling in *Adalat Prasad's case (supra);* it did so on 20.12.2003. In the judgments of this court noticed above i.e. *B.P.Saha's case (supra)* as well as *Joginder Kumar Vs. Shamsher Singh Malik & Anr., (2007 (1) JCC 8),* (Criminal RP No.437/2000, decided on 29.11.2006) it was held that this court has the power under Section 482 to set aside the orders of the Magistrate which may be vitiated, in respect of accused, against whom there was no material. The court in *Joginder Kumar's* case *(supra)* held that Section 482 is wide; it saves the inherent powers of the court to exercise and intercede if the justice of the case so warrants. In both the judgments, the Court held that lack of jurisdiction alone need not be the criteria for adjudging whether an order resulting summons made by the Magistrate, is illegal. The Court should see whether the justice of the case so warrants such an order.

19. In view of the above discussion while there can be no two opinions about the applicability of the law after *Adalat Prasad's* case (supra) and the limited scope of proceeding before the Magistrate in summons cases, yet, unless the exercise of power by trial court through orders made before *Adalat Prasad*'s case (supra) decision was rendered, occasioned or resulted in failure of justice, the court would desist from exercising its inherent powers. The facts of this case show that the barring one letter,

there is serious dispute about the authorship of letters said to have been issued by the respondent, he disputed the pamphlet relied upon. At the relevant time when certain issues were raised by him, an audit report did exist and a criminal case was pending against the petitioner. On an over view of these attendant circumstances I am satisfied that the irregularity if any by the revisional court in not interfering with the trial court's is dismissing the complaint, has not resulted in failure of justice.

20. For the above reasons, the petition has to fail; it is accordingly dismissed. In the circumstances of the case the parties are left to bear their own costs.

(S.RAVINDRA BHAT)
JUDGE

MAY 21, 2007
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